

United States  
Circuit Court of Appeals

For the Ninth Circuit. 9

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L. KENNETH SCHOENFELD, HERBERT A. SCHOENFELD, JR., and RALPH A. SCHOENFELD, administrators, de bonis non, cum testamento annexo, of the Estate of HERBERT A. SCHOENFELD, Deceased,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

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Transcript of the Record

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Upon Petition to Review a Decision of the United States  
Board of Tax Appeals.

FILED

1938

PAUL P. O'BRIEN,

CLERK







United States  
Circuit Court of Appeals

For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES:

For Taxpayer:

MELVILLE MONHEIMER,  
VAN C. GRIFFIN.

For Comm'r:

RALPH STAUBLEY, Esq.,  
JAMES C. MADDOX, Esq.

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Docket No. 83654

L. KENNETH SCHOENFELD, HERBERT A.  
SCHOENFELD and RALPH A. SCHOEN-  
FELD, administrators, de bonis non, cum testa-  
mento annexo, of the Estate of HERBERT A.  
SCHOENFELD, deceased,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

DOCKET ENTRIES

1936

Apr. 13—Petition received and filed. Taxpayer no-  
tified. (Fee paid).

Apr. 13—Copy of petition served on General  
Counsel.

May 1—Notice of appearance of Melville Mon-  
heimer and Van C. Griffin as counsel,  
filed.

May 19—Motion to dismiss (Rule 5(g)), filed by  
General Counsel.

1936

- May 21—Hearing set June 10, 1936, on motion.
- June 2—Amended petition filed by taxpayer, 6/3/36 copy served on General Counsel.
- June 2—Affidavit of administrators in support of amended petition filed by taxpayer.
- June 2—Affidavit of administrators in support of amended petition filed by attorney.
- June 2—Brief in support of amended petition filed by taxpayer. 6/3/36 copy served on General Counsel.
- June 10—Hearing had before Mr. Smith on motion of respondent to dismiss amended petition. Deny—usual time to answer.
- June 10—Order denying motion to dismiss and that respondent be allowed 60 days to answer or 45 days to move, entered.
- July 14—Answer to amended petition filed by General Counsel.
- July 20—Copy of answer served on taxpayer.

1937

- May 18—Hearing set week of June 21, 1937, Seattle, Washington.
- June 21-22—Hearing had before Mr. Arundell on merits. Submitted. Petitioner's brief due Aug. 2, 1937, Respondent's brief due Sept. 2, 1937, Reply Brief Sept. 17, 1937.
- July 13—Transcript of hearing of June 21, 1937, filed.
- July 13—Transcript of hearing of June 22, 1937, filed.

1937

- Aug. 2—Brief filed by taxpayer. 8/2/37 copy served on General Counsel.
- Sept. 10—Motion for leave to file brief lodged, filed by General Counsel. 9/13/37 Granted.
- Sept. 29—Motion for leave to file reply brief, reply brief lodged, filed by taxpayer. 9/30/37 Granted.
- Oct. 1—Copy of motion and reply brief served on General Counsel.

1938

- Jan. 7—Findings of fact and opinion rendered, C. R. Arundell, Div. 7. Decision will be entered under Rule 50. [1\*]
- Jan. 10—Decision entered, C. R. Arundell, Div. 7.
- Mar. 29—Petition for review by United States Circuit Court of Appeals, 9th Circuit, with assignments of error filed by taxpayer.
- Apr. 1—Proof of service filed by taxpayer.
- May 24—Motion to enlarge time for preparation of evidence and transmission and delivery of record filed by taxpayer.
- May 24—Order enlarging time to 6/27/38 to prepare and transmit record, entered.
- June 24—Motion to enlarge time for preparation of evidence and transmission and delivery of record filed by taxpayer.
- June 24—Order enlarging time to July 27, 1938 for preparation of evidence and transmission and delivery of record, entered.

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\*Page numbering appearing at the foot of page of original certified Transcript of Record.

1938

- July 26—Motion to enlarge time to Aug. 26, 1938 for preparation of evidence and transmission and delivery of record filed by taxpayer.
- July 26—Order enlarging time to Aug. 26, 1938 to prepare the evidence and transmit the record, entered.
- Aug. 19—Motion to enlarge time to Sept. 26, 1938 to prepare and file statement of evidence filed by taxpayer.
- Aug. 19—Order enlarging time to Sept. 26, 1938 to prepare and transmit record, entered.
- Sept. 8—Statement of evidence lodged.
- Sept. 10—Agreed statement of evidence approved and ordered filed.
- Sept. 19—Agreed praecipe with proof of service thereon filed by taxpayer.
- Sept. 23—Order extending time for transmission and delivery of record to October 26, 1938, filed. [2]

United States Board of Tax Appeals.

No. 83654.

L. KENNETH SCHOENFELD, HERBERT A. SCHOENFELD and RALPH A. SCHOENFELD, administrators, de bonis non, cum testamento annexo, of the Estate of HERBERT A. SCHOENFELD, deceased,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

AMENDED PETITION.

The above named petitioners hereby petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency, MT-ET-1442-Washington, dated January 17, 1936 and as a basis for their proceedings allege as follows:

I.

That the petitioners are the duly qualified and acting administrators, de bonis non, cum testamento annexo, of the Estate of Herbert A. Schoenfeld, Deceased.

II.

The notice of deficiency, copy of which is attached and marked exhibit "A", was mailed to the taxpayers on January 17th, 1936. [3]

## III.

The taxes in controversy are estate taxes in the sum of \$5974.89.

## IV.

The determination of the tax set forth in the notice of deficiency and letters therein referred to is based upon the following errors:

A. The reduction of real property taxes from \$25,344.71 to \$22,082.07.

B. The reduction of cash, identified as previously taxed within five years, from \$5000.00 to \$1349.30.

C. The allowance as a deduction of cash in the sum of \$47,682.15 on deposit with the Mutual Benefit Life Insurance Company, identified as previously taxed within five years, in only the sum of \$9997.29.

D. The reduction of the claim of Beatrice R. Falk, et al., from \$65,190.00 to \$24,226.79.

## V.

The facts upon which the taxpayers rely as a basis for this proceeding are as follows:

A-1. The decedent owned at the time of his death three parcels of real estate situated in Seattle, Washington, and an undivided fractional interest in two other parcels of real estate in the same city. The taxes and assessments, on the date of decedent's death, which were liens against the three parcels owned by the decedent, amounted to \$13,756.16, [4] and the liens for taxes and assessments against the fractional interest in the two other parcels of real

estate amounted to \$11,588.55, totaling \$25,344.71 all of which are deductible under the laws of the State of Washington as an expense of administration.

A-2. The Commissioner reduced the deduction to \$22,082.07.

B-1. The decedent's wife, Bessie B. Schoenfeld, died testate, a resident of and at Seattle, King County, Washington, on June 26, 1931, leaving an estate which was appraised at \$372,804.76 and on which an estate tax was finally determined by and paid to the United States under the Internal Revenue Act of 1926 in the sum of \$505.08. The decedent inherited the residue of his wife's estate and died a resident of Seattle, King County, Washington, on April 21, 1933.

B-2. There was included in the residue of the estate of Bessie B. Schoenfeld certain community property consisting of cash in various bank accounts, in excess of \$20,000. On August 6, 1931 the decedent transferred \$10,000. from the prior estate to a savings account at the First National Bank of Seattle (now Seattle First National Bank) and on September 28, 1931 he deposited to this savings account \$6000.00 of his own money. On April 1, 1932 he [5] withdrew from his savings account \$2350.00 and on July 1, 1932 he withdrew \$1300.10. That there were no other withdrawals from or deposits to this savings account and that the balance, with accrued interest, at the date of decedent's death was \$12,952.23. That the lowest balance of the account

between September 26, 1931 and April 21, 1933 was on July 1, 1932, at which time the balance was \$12,744.82.

B-3. That \$10,000. of the money in the savings account at the First National Bank at Seattle, being identified as community property, previously taxed within five years, is a deduction from the estate of the decedent.

C-1. There was included in the gross estate of Bessie B. Schoenfeld life insurance payable to the decedent from the Mutual Benefit Life Insurance Co., in the sum of \$50,663.00, of which sum the decedent withdrew \$663.00 in cash and left \$50,000. on deposit with the Mutual Benefit Life Insurance Co. There was no other life insurance on the life of Bessie B. Schoenfeld. Subsequently the decedent withdrew \$2500.00 from the deposit and at the date of his death there was on deposit with the Mutual Benefit Life Insurance Co., the sum of \$47,500.00, plus accrued interest of \$182.15.

C-2. The petitioners repeat and make a part hereof paragraph V B-1. [6]

C-3. The \$47,682.15 on deposit with the Mutual Benefit Life Insurance Co., having been identified as previously taxed within five years the Estate of Herbert A. Schoenfeld is entitled to deduct the full amount thereof.

D-1. The petitioners repeat and make a part hereof paragraph V B-1.

D-2. On December 10, 1923 the community consisting of Herbert A. and Bessie B. Schoenfeld,



together with Berman Schoenfeld, purchased 25.15 shares of the capital stock of Schoenfeld Holding Corporation from Maude F. Schoenfeld, and the community of Herbert A. and Bessie B. Schoenfeld received one-half (12.575 shares) of the stock, and was obligated to pay one-half of the purchase price. These 12.575 shares of stock were included in the Estate of Bessie B. Schoenfeld.

D-3. The purchase price of the stock was an agreement to pay the seller a certain sum of money for her life and after her death to pay \$500.00 a month to her brothers and sisters so long as any of her brothers and sisters lived. The seller of the stock died prior to June 26, 1931 and on April 21, 1933 and now only four of the brothers and sisters were alive and their ages on April 21, 1933 were respectively 48, 58, 59 and 70.

D-4. At the date of death of Bessie B. Schoenfeld the community consisting of Herbert A. Schoenfeld and Bessie B. Schoenfeld owned 30.109 shares of the capital stock of [7] Schoenfeld Holding Corporation and her will bequeathed her community interest, to-wit: 15.0545 shares of the capital stock of Schoenfeld Holding Corporation to her husband for life and upon his death to their three sons, and paragraph Fourth of her Will (a copy of which is in the possession of the Commissioner) reads as follows:

“I direct that any community liability to which my estate is subject because of the purchase price of stock of the Standard Furniture

Company be paid by my husband out of the earnings of my community half of the stock of the Standard Furniture Co., and/or the Schoenfeld Holding Corporation, hereinabove bequeathed to him for his life.”

That dividends, in excess of the amount required to make the payments on the contract, have been regularly paid on such stock since the death of Bessie B. Schoenfeld, such dividends being specifically as follows:

April 13, 1932—\$100,000.00, of which \$15,054.50 accrued on the community half owned by Bessie B. Schoenfeld, deceased.

January 29, 1934—\$20,000.00 of which \$3,010.90 accrued on the community half owned by Bessie B. Schoenfeld, deceased.

December 2, 1935—\$36,000.00 of which \$5,419.62 accrued on the community half owned by Bessie B. Schoenfeld, deceased.

That during his lifetime Herbert A. Schoenfeld retained the dividends for his own use.

D-5. That Herbert A. Schoenfeld's community half of the stock so purchased from Maude F. Schoenfeld, to-wit: 12.575 shares, is a part of his gross estate and was appraised at \$91,168.75. [8]

D-6. That the indebtedness to Beatrice R. Falk, et al., was a personal obligation of the decedent at the time of his death and was a claim which was enforceable against his estate.

D-7. At the time of decedent's death the exact age of the youngest beneficiary was 47 years 9 months 17 days and according to the Actuaries or Combined Experience Table of Mortality the life expectancy of the youngest beneficiary was 21.73 years.

D-8. Beatrice R. Falk, on behalf of the recipient beneficiaries, filed a claim against decedent's estate in the sum of \$65,190.00, being one-half of the balance then owing on the contract, and this claim was approved in such amount by the administrators, presented to the probate court of King County, Washington, and by the court approved in the sum of \$65,190.00.

D-9. The Commissioner reduced the claim to \$24,226.79.

Wherefore, the petitioners pray that this Board may hear the proceeding and determine the matters herein set forth and determine that there is no deficiency due from petitioners in this matter.

MELVILLE MONHEIMER

and

VAN C. GRIFFIN

Counsel for Petitioners

1715 Smith Tower, Seattle, Wash. [9]

State of Washington,  
County of King—ss.

L. Kenneth Schoenfeld, Herbert A. Schoenfeld and Ralph A. Schoenfeld, being first duly sworn upon oath depose and say:

That they are the petitioners in the above entitled matter; that they have read the foregoing petition and are familiar with the statements contained therein and that the facts stated are true, except as to those facts stated to be upon information and belief and those facts they believe to be true.

L. KENNETH SCHOENFELD  
HERBERT A. SCHOENFELD  
RALPH A. SCHOENFELD

Subscribed and sworn to before me this 29th day of May, 1936.

[Seal]

LORETTA ENNIS

Notary Public in and for the State of Washington,  
residing at Seattle. [10]

January 17, 1936

MT-ET-1442 Washington

Estate of Herbert A. Schoenfeld

Date of death—April 21, 1933

L. Kenneth Schoenfeld, et al., Administrators, c.t.a.,  
c/o Standard Furniture Company,  
Seattle, Washington.

Sirs:

A deficiency in the Federal estate tax liability of the above-named estate was proposed in a previous letter from this office, a copy of which is attached.

No protest against the proposed deficiency has been received. A review of the file in the case confirms the findings explained in the previous letter, and a deficiency in the estate tax of \$11,256.84 is hereby determined. See statement attached.

This notice of deficiency is given in accordance with the provisions of Section 308(a) of the Revenue Act of 1926 as amended by Section 501 of the Revenue Act of 1934, and a petition for a redetermination of the deficiency may be filed with the United States Board of Tax Appeals within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter. If you acquiesce in this determination and do not desire to file a petition with the United States Board of Tax Appeals, you are requested to execute and forward the enclosed Form 890, waiving the restrictions on the immediate assessment and collection of the deficiency.

The submission of the waiver will expedite the closing of this case and will also benefit the estate by preventing the accumulation of interest charges, as the interest period terminates 30 days after the filing of the waiver or on the date of assessment, whichever is earlier. The signing of the waiver does not prejudice your right to file a claim for refund of all or any portion of the tax. If you desire to consent to the assessment and collection of only a part of the deficiency, the enclosed form of waiver should be executed in such partial amount.

If within the 90-day period a petition has not been filed with the United States Board of Tax Appeals or the waiver, Form 890, has not been submitted, the deficiency will be thereafter assessed.

Respectfully,

GUY T. HELVERING

Commissioner

By D. S. BLISS

Deputy Commissioner

Enclosures:

Copy of letter.

Waiver, Form 890. [11]

MT-ET-C1-1442-Washington Nov. 18, 1935  
 Estate of Herbert A. Schoenfeld  
 Date of death—April 21, 1933  
 L. Kenneth Schoenfeld, et al., Administrators, c.t.a.,  
 c/o Standard Furniture Company,  
 Seattle, Washington.

Sirs:

Reference is made to the protest filed on behalf of the above-named estate against the tentative determination set forth in the letter addressed to you by this office under date of June 14, 1935.

The following statement shows the action contemplated as the result of careful consideration of the estate's protest:

	DEDUCTIONS		
	<u>Returned</u>	<u>Tentatively Determined</u>	<u>Proposed Determination</u>
Debts of decedent.....	\$308,406.65	\$264,180.80	\$264,180.80

After a careful review of the evidence of record on item 1 of debts of decedent, it appears that no adjustment is warranted because a deduction for an item in excess of the value of the item included in the decedent's gross estate is not allowable, and the evidence does not show that the decedent was personally liable for the taxes at date of death. Item 22 has also been reviewed and the deduction allowed in the sum of \$24,226.79 appears correct. To pay \$500.00 per month on a 4% basis, a fund of \$152,730.00 is required. The reversion factor which represents the present value of \$1.00, the possession and enjoyment of which is postponed until the end of the year of the date of death of the survivor of four persons, aged 48, 58, 58 and 70 years, respectively, is .6355. The remainder value is, therefore, \$55,822.82 which subtracted from the fund leaves \$96,907.18, the value of the life estates, one-fourth of which, or \$24,226.79, is a liability of this estate. Assuming without conceding that decedent was personally liable for the whole amount, it appears that had he or his estate been required to pay more than one-fourth, recourse could have been had against the other parties including his wife's heirs or the respective shares of the other parties. Further, the liability for any excess over one-fourth was not contracted bona fide and for an adequate and full consideration in money or money's worth. [12]

	<u>Returned</u>	<u>Tentatively Determined</u>	<u>Proposed Determination</u>
Property previously taxed (1926 Act) .....	\$19,134.77	\$24,301.92	\$23,559.22
Property previously taxed (1932 Act) .....	23,965.23	28,702.53	27,825.34

The deductions for property previously taxed have been rechecked. Item 17 is reduced from \$3,174.95 to \$1,349.30 in accordance with the decision in the case of *U. S. v. Rodenbough* decided March 15, 1929 and set forth in *Internal Revenue Cumulative Bulletin VIII-2*, page 382. This case was first decided by the U. S. District Court and is reported in 21 Fed. (2d) 781, and the case was then appealed to the U. S. Circuit Court and is reported in 25 Fed. (2d) 13, which Court reversed the judgment of the District Court and remanded the case for a new trial in accordance with the law of this opinion. The final decision is not reported in the *Federal Reporter* but is set forth in the *Cumulative Bulletin* cited above. A recheck of item 21 has been made and no adjustment appears warranted. All the other items set forth in column 3, page 3, of the agent's report are unchanged. The deductions for property previously taxed are computed as follows:



678,736	:	57,911.34	::	402,615.81	:	34,352.12
57,911.34	—	34,352.12	=	23,559.22		deduction for 1926 Act
678,736	:	57,911.34	::	352,615.81	:	30,086.00
57,911.34	—	30,086.00	=	27,825.34		deduction for 1932 Act

The following summary is submitted:

Gross estate .....	644,894.37	678,736.00	678,736.00
Deductions (1926 Act).....	465,976.43	426,917.73	426,177.73
Net Estate (1926 Act).....	178,917.94	251,818.27	252,560.27
Gross estate .....	644,894.37	678,736.00	678,736.00
Deductions (1932 Act).....	420,806.89	381,318.34	380,441.34
Net estate (1932 Act).....	224,087.48	297,417.66	298,294.66
Gross tax (1926 Act).....	3,867.54	6,572.73	6,600.73
Credit for estate or inheritance tax .....	3,094.03	0.00	0.00
Net Tax (1926 Act).....	773.51	6,572.73	6,600.73
Total gross taxes (1926 and 1932 Acts).....	16,649.62	24,715.94	24,811.47
Gross tax (1926 Act).....	3,867.54	6,572.73	6,600.73
Net additional tax.....	12,782.08	18,143.21	18,210.74
Net tax (1926 Act).....	773.51	6,572.73	6,600.73
Total net tax.....	13,555.59	24,715.94	24,811.47
Deficiency .....			\$11,250.00

If the full 80% credit is allowed on the tax under the 1926 Act, the net deficiency tax will be \$5,974.89. Execution of the enclosed waiver as to that amount will enable the Bureau to assess the full amount of the probable net tax and expedite the closing of the case. The signing of the waiver will not preclude the estate from later filing a claim for refund. Please advise when the credit evidence may be expected.

This is not a final determination and no petition herefrom lies to the Board of Tax Appeals. Your reply to this letter within twenty days of this date will be appreciated.

Respectfully,

(signed) D. S. BLISS

Deputy Commissioner

Encl.

Waiver

JFM:LAC

[Endorsed]: U. S. B. T. A. Filed June 2, 1936.

[14]

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[Title of Board and Cause.]

### ANSWER TO AMENDED PETITION

The Commissioner of Internal Revenue, by his attorney, Herman Oliphant, General Counsel for the Department of the Treasury, for answer to the petition of the above-named taxpayers, admits and denies as follows:

I and II. Admits the allegations contained in paragraphs I and II of the amended petition.

III. Admits so much of paragraph III of the amended petition as alleges that the taxes in controversy are estate taxes, and denies the remaining allegations contained in said paragraph III.

IV. Denies that the respondent, in determining the deficiency tax, committed errors as alleged in paragraph IV of the amended petition.

V. A-1, A-2, B-1, B-2, B-3, C-1, C-2, C-3, D-1, D-2, D-3, D-4, D-5, D-6, D-7, D-8 and D-9. Denies the allegations contained in subdivisions A-1 to D-9, inclusive, of paragraph V of the amended petition.

[15]

VI. Denies each and every allegation contained in the amended petition not hereinbefore specifically admitted or denied.

Wherefore it is prayed that the determination of the Commissioner be approved.

HERMAN OLIPHANT,

General Counsel

for the

Department of the Treasury.

Of Counsel:

FRANK T. HORNER,

Special Attorney,

Bureau of Internal Revenue.

RFS/y 7/14/36

[Endorsed]: U. S. B. T. A. Filed July 14, 1938.

[16]

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[Title of Board and Cause.]

Docket No. 83654. Promulgated January 7, 1938.

#### FINDINGS OF FACT AND OPINION

1. Estate Tax—Claim Against the Estate—  
The allowable claim against decedent's estate under a stock purchase contract, the purchasers being jointly and severally liable, may not ex-

ceed his share of the entire liability measured by the proportion of stock acquired by him under the contract, in this case one-fourth. The fact of allowance of a larger amount by the probate court is not determinative of the amount deductible under the Federal statute.

2. *Id.*—Burden of Proof.—The amount of an allowable deduction having been determined by the Commissioner by the use of a certain interest rate and mortality tables, the petitioners have the burden of proving error in the figures so used.

Van C. Griffin, Esq., for the petitioners.

James C. Maddox, Esq., for the respondent.

This proceeding involves a deficiency in estate tax in the amount of \$11,256.84, only a part of which is in controversy. The petition filed alleged several errors, but only one is now urged by the petitioners, namely, the Commissioner's reduction of a claim against decedent's estate from \$65,190 to \$24,226.79.

#### Findings of Fact.

The petitioners are administrators of the estate of Herbert A. Schoenfeld, who died on April 21, 1933. Decedent was a resident of the State of Washington and his estate is subject to administration under the laws of that state.

On December 10, 1923, Berman Schoenfeld, Herbert A. Schoenfeld (the decedent), and Bessie B. Schoenfeld, wife of the decedent, entered into a con-

tract whereby they acquired from Maude Falk Schoenfeld 25.15 shares of stock of the Schoenfeld Holding Corporation. It was understood and agreed by all the parties that one-half of those [17] shares became the property of Berman Schoenfeld and that one-fourth became the property of each of the other two purchasers. The consideration for the purchase was the agreement by the purchasers to pay to the seller for life such sums as the seller might require for her living expenses. The monthly sum agreed upon at that time was \$1,000, and it was agreed that the maximum should not exceed \$1,500 per month. The purchasers further agreed, as part of the consideration, that upon the death of the seller they would pay monthly incomes for life to the brothers or sisters of the seller as the seller should direct by will, but not to exceed \$500 per month. The provisions last described were amended in 1926 to provide that one of the seller's sisters, Beatrice R. Falk, should be assured a life income of \$1,000 per month if that amount was needed for her care and support. No payments have been made under this amendment. As security for the payments to be made by the purchasers they agreed to and did deposit the 25.15 shares of stock with a national bank.

The seller of the stock, Maude Falk Schoenfeld, died prior to June 26, 1931. Bessie B. Schoenfeld died on June 26, 1931. By her will Bessie B. Schoenfeld devised her community interest in the Schoenfeld Holding Corporation stock to her husband for life with remainder over to her sons. She directed

by her will that her community liability on account of the purchase of the stock be paid by her husband out of the earnings on her community half of the stock.

At the death of Herbert A. Schoenfeld there were four persons living who were entitled to benefits under the stock purchase contract. Their ages were 48, 58, 59, and 70. In June 1933 one of the four beneficiaries, on behalf of all four, filed a claim against the estate in the amount of \$65,190 as representing the estate's one-half of the liability under the stock purchase contract of December 10, 1923. The claim was approved by the administrators and by the judge of the probate court having jurisdiction of the estate.

In each of the estate tax returns of decedent and of decedent's wife there was returned as gross estate the value of one-fourth of the 25.15 shares of stock. In auditing these returns the respondent in each case allowed as a deduction the amount he determined as representing one-fourth of the entire contract liability. In the present case the administrators claimed a deduction for decedent's contract liability in the amount of \$65,190. The respondent allowed \$24,226.79 of the deduction claimed and disallowed the remainder.

#### Opinion.

Arundell: The single issue submitted for decision was tried largely upon the question of the use of a formula to determine the amount [18] allowable for the claim of the contract beneficiaries against the

estate. The respondent in his determination of a deficiency has conceded the allowability of a claim and has worked out the amount allowable by a formula based on interest, mortality, and present worth tables.

Before reaching the matter of a formula, there is to be determined the question of whether decedent's estate is liable for one-fourth or one-half of the total liability under the stock purchase contract. The petitioners claim one-half, the amount thereof being the amount for which a claim was filed by the contract beneficiaries and approved by the probate court. The Commissioner has allowed one-fourth of the contract liability, determining the amount allowable by a formula discussed more fully below.

The statute applicable here is section 805 of the Revenue Act of 1932, amending section 303(a)(1) of the Revenue Act of 1926. This statute allows deductions, among others, for claims against the estate (subsection (B)), and for mortgages and indebtedness in respect to property which is included in gross estate without deduction for the mortgage or indebtedness (subsection (D)). These provisions are qualified by subsection (E) in several respects. One of the qualifications is that limiting the amounts deductible to such as are allowable by the laws of the jurisdiction under which the estate is being administered. Another is that the amounts allowable shall "be limited to the extent that they were contracted bona fide and for an adequate and full consideration in money or money's worth."

Under these provisions of the statute the claim here made for allowance of what is said to be one-half of the contract liability fails in several respects. First, it appears that the administrators included in decedent's gross estate only the value of one-fourth of the 25.15 shares of Schoenfeld Holding Corporation stock. As stated in the petition, the decedent had a community half of 12.575 shares, which interest was valued at \$91,168.75. Against this community half of 12.575 shares, which is one-fourth of the total shares, the petitioners claim a deduction of one-half of the liability under the purchase contract. This may not be done under that part of the statute (subsection (D)) which requires an equality of treatment of the value of property returned and the amount of indebtedness against it. In other words, under subsection (D) the petitioners must need to have returned one-half of the value of the full 25.15 shares in order to support a claim for deduction of one-half of the indebtedness for the purchase price. Further, inasmuch as the decedent was entitled under the contract to only a one-fourth interest, he can not be said to have "contracted bona-fide and for an adequate and full consideration in money or money's worth" for any greater sum than one-fourth of the liability.

If, as argued by the petitioners, one-half of the contract obligation [19] was a community obligation, then upon the death of the wife her estate became liable for one-half thereof (one-fourth of the whole obligation) and thus the decedent's estate



would have a liability for only one-fourth of the whole. We have held, following the Washington statute and cases, that upon dissolution of the community by death the estate of the first decedent is entitled to deduct only one-half of the community debts. Estate of Julius C. Lang, 34 B. T. A. 337. The case of Schramm v. Steele, 97 Wash. 309; 166 Pac. 634, cited by petitioners is not in point. That case holds that community property is not subject to execution under a judgment against the husband for a tort committed by him alone.

The liability of the purchasers of the stock was, under the contract, a joint and several liability. However, if the decedent's estate were required to pay any more than the decedent's proportionate share there would arise a right of contribution against the other purchasers. The same situation was present in John Parrott, Jr., et al., Executors, 7 B. T. A. 134; *affd.* (C. C. A., 9th Cir.), 30 Fed. (2d) 792. In that case two persons were jointly and severally liable on a mortgage and it was held that upon the death of one only one-half of the indebtedness could be deducted from the gross estate. The court's opinion reads in part:

“\* \* \* if either were required to pay more than one-half, the excess so paid was recoverable from the other. \* \* \* Clearly, for taxation purposes under the Revenue Act, but one-half of the total mortgage debt was deductible in arriving at the amount of the tax upon the estate of the testatrix.”

Following that case it must be held here that the decedent's estate may not deduct more than one-fourth of the contract liability.

The approval by the probate court of the claim presented by one of the contract beneficiaries on behalf of all of the beneficiaries does not establish the deductibility of the amount thereof under the Federal estate tax law. In *Julius C. Lang, supra*, loc. cit. p. 345, we rejected a similar contention and determined the amount deductible under "the law of the jurisdiction \* \* \* under which the estate is being administered" as the Federal statute requires. In *United States v. Mitchell* (C. C. A., 7th Cir.), 74 Fed.(2d) 571, the court held that the fact of allowance of a claim by the probate court and the payment thereof by the executors "has no bearing on the deductibility of the claim" under the Federal statute. In *Mary M. Buck et al., Executors*, 25 B. T. A. 780, we determined the amount reasonably required for the support of decedent's widow and held that amount allowable, notwithstanding the probate court's approval of a larger amount and the payment of the larger sum. The Circuit Court of Appeals for the Ninth Circuit, affirming our holding on this point, 73 Fed.(2d) 760, 764, said: "The fact that the probate court [20] made an allowance of a larger sum was not binding on the Board of Tax Appeals." Following the above cases, we hold that the fact that the probate court has allowed the claim of the contract beneficiaries in an amount purporting to be one-half of the total contract liability

is not determinative of the amount allowable in this proceeding.

We have held above that the proportion of the contract liability representing an allowable deduction from this estate is one-fourth of the total liability. The Commissioner determined the same proportion to be allowable. In calculating the amount allowable the Commissioner determined the size of the fund necessary to pay the contract liability on a 4 percent basis and applied to it a reversion factor based on the life expectancy of the four beneficiaries at their then ages of 48, 58, 59, and 70 years. Petitioners attack the use of the 4 percent rate and also the factor based on the life expectancy of the four beneficiaries. On these matters, however, the petitioners have failed to establish that any other figures are more nearly correct. Where deductions must be estimated according to the expected life of individuals, resort to mortality tables is proper. *Ithaca Trust Co. v. United States*, 279 U. S. 151. This is what the Commissioner has done and if he erred in selecting a figure of life expectancy the burden is on the petitioners to show it. *Fidelity-Philadelphia Trust Co. et al., Executors*, 27 B. T. A. 972. The same applies to use of the interest rate.

The Commissioner is sustained.

Decision will be entered for the respondent. [21]

United States Board of Tax Appeals  
Washington

Docket No. 83654

ESTATE OF HERBERT A. SCHOENFELD,  
DECEASED, L. KENNETH SCHOENFELD,  
HERBERT A. SCHOENFELD and RALPH  
A. SCHOENFELD, ADMINISTRATORS, de  
Bonis Non, cum Testamento Annexo,  
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

## DECISION

Pursuant to the determination of the Board, as set forth in its report promulgated January 7, 1938, it is

Ordered and Decided: That there is a deficiency in estate tax in the amount of \$11,256.84.

[Seal] (Signed) C. R. ARUNDELL  
Member.

Entered Jan. 10, 1938. [22]

[Title of Board and Cause.]

PETITION OF ADMINISTRATORS FOR REVIEW BY THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT OF A DECISION BY THE UNITED STATES BOARD OF TAX APPEALS.

The petitioners, L. Kenneth Schoenfeld, Herbert A. Schoenfeld, Jr., and Ralph A. Schoenfeld, administrators de bonis non, cum testamento annexo of the Estate of Herbert A. Schoenfeld, deceased, by Melville Monheimer and Van C. Griffin, their counsel, hereby file their petition for a review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision of the United States Board of Tax Appeals promulgated on [23] January 7, 1938 ( B. T. A. ) determining a deficiency in the Federal estate tax in the amount of \$11,256.84 and respectfully show:

I.

The petitioners, L. Kenneth Schoenfeld, Herbert A. Schoenfeld, Jr., and Ralph A. Schoenfeld are the duly qualified and acting administrators de bonis non, cum testamento annexo of the Estate of Herbert A. Schoenfeld, deceased, who died on the 21st day of April, 1933 and at the time of his death was a resident of Seattle, King County, Washington, and his estate was duly administered by the Superior Court of King County, Washington.

## II.

## Nature of Controversy

The controversy involves the proper determination of the petitioners' liability for Federal Estate tax by reason of the death of Herbert A. Schoenfeld.

The marital community consisting of Herbert A. and Bessie B. Schoenfeld on December 10, 1923 purchased from Maude F. Schoenfeld 12.575 ( $\frac{1}{2}$  interest in 25.15) shares of stock of the Schoenfeld Holding Corporation and agreed to pay  $\frac{1}{2}$  of the sum of \$500.00 per month to six designated persons—the full sum of \$500.00 per month [24] to be paid so long as any one of the six designated persons survived. Berman Schoenfeld, a party to the same contract, purchased the remaining half of the 25.15 shares.

Bessie B. Schoenfeld died on June 26, 1931 and her estate was probated by the Superior Court of the State of Washington for King County. Her will devised her entire community interest in stock of the Schoenfeld Holding Corporation to her husband for his life and made him the residuary legatee of her estate. Her will further charged him with the payment of her community liability arising out of the contract of December 10, 1923; such payments to be made out of the income of her community half of her stock in the corporation.

The 12.575 shares of stock were inventoried as community property in her estate and Federal estate tax paid thereon. The residue of the wife's

estate passing to the decedent was \$57,911.34 and he received dividends on her community half of the stock during his lifetime in the sum of \$15,054.00.

The community liability for the purchase of the stock was claimed as a deduction from the wife's estate. The monthly payments stipulated in the contract were paid between the dates of the wife's death and the husband's death and on April 21, 1933 four of the [25] beneficiaries were still alive. Their ages were 48, 58, 59 and 70 years and in accordance with the Actuaries or Combined Experience Table of Mortality the life expectancy of the youngest beneficiary was 260.76 months. The husband's estate claimed as a deduction the entire community liability of one-half of the monthly payments for 260.76 months, amounting to \$65,190.00.

The probate court of King County, Washington, allowed the claim in the sum of \$65,190.00.

The husband's community interest in the 12,575 shares of stock was appraised in his estate at \$95,168.75.

The Commissioner of Internal Revenue in calculating the amount allowable as a deduction determined the size of the fund necessary to pay the contract liability on a 4% basis and applied to it a reversionary factor based on the life expectancy of the four beneficiaries at their then ages. From the fund determined necessary the Commissioner deducted the reversionary value and allowed the difference between the fund and the reversionary value as the total amount payable to the beneficiaries and

permitted the estate to deduct one-half of the community liability therefor. [26]

### III.

The administrators being aggrieved by the Findings of Fact and Conclusions of Law contained in said Findings and opinion of the Board of Tax Appeals and by its decision entered pursuant thereto desire to obtain a review thereof by the United States Circuit Court of Appeals for the Ninth Circuit.

### IV.

#### Assignments of Error

Petitioners assign as error the following acts and omissions of the Board of Tax Appeals:

1. The holding that the amount of the indebtedness could be discounted because of the period of time over which payments were made.
2. The holding that a mathematical formula should be used to determine the amount of the claim.
3. The holding that there was not adequate consideration for the indebtedness claimed as a deduction.
4. The failure to allow the estate to deduct the full amount it will be compelled to pay by reason of the contract.
5. The holding that the estate could deduct only one-half of the liability of the husband and wife instead of the full amount of the liability of the husband and wife. [27]
6. The failure to allow the sum of \$65,190.00 as a deduction from the decedent's gross estate.



7. The holding that the decedent's estate could deduct from the gross estate only the sum of \$24,-226.79.

8. The holding that there is a deficiency of \$11,256.84 due from the taxpayers in lieu of a determination that there is no deficiency in the Federal estate tax paid.

Respectfully submitted,

(s) MELVILLE MONHEIMER

and

(s) VAN C. GRIFFIN

Counsel for Petitioner [28]

State of Washington,  
County of King—ss.

Herbert A. Schoenfeld, Jr., and Ralph A. Schoenfeld being first duly sworn upon oath depose and say:

That they are two of the three petitioners named in the foregoing petition; that they have read the foregoing petition, know the contents thereof and to the best of their knowledge and belief all statements made therein are true and correct.

(s) HERBERT A. SCHOENFELD, JR.

(s) RALPH A. SCHOENFELD

Subscribed and sworn to before me this 25th day of March, 1938.

[Seal] (s) RICHARD M. THATCHER  
Notary Public in and for the State of Washington,  
residing at Seattle.

[Endorsed]: U. S. B. T. A. Filed March 29, 1938.

[29]

[Title of Board and Cause.]

### STATEMENT OF EVIDENCE

Following is a statement of evidence submitted to the Board of Tax Appeals in the above mentioned case, so far as is necessary to the assignments of error as filed, reduced to narrative form:

#### L. KENNETH SCHOENFELD

testified that he was one of the three sons of Herbert A. and Bessie B. Schoenfeld; that he was born in Seattle and that his parents had resided in Seattle for many years; that Herbert A. Schoenfeld and Berman Schoenfeld were brothers and that Maude F. Schoenfeld was the widow of a third brother, Ralph A. Schoenfeld; that his [30] uncle, Berman Schoenfeld, was named as executor of his father's estate; that his uncle resigned as such executor and L. Kenneth Schoenfeld, Herbert A. Schoenfeld and Ralph A. Schoenfeld were appointed administrators, *de bonis non, cum testamento annexo*.

The witness identified as Exhibit No. 1 a contract dated December 10th, 1923, between Maude F. Schoenfeld, as first party, and Berman Schoenfeld, Herbert A. Schoenfeld and Bessie B. Schoenfeld as second parties.

The contract reads as follows:

#### EXHIBIT No. 1.

#### “AGREEMENT.

This Agreement, made in duplicate is entered into at Seattle, King County, Washing-

(Testimony of L. Kenneth Schoenfeld.)

ton, this 10th day of December, 1923, by and between Maude F. Schoenfeld, party of the first part, and Berman Schoenfeld and H. A. Schoenfeld and Bessie B. Schoenfeld, his wife, parties of the second part.

Whereas, the party of the first part is the owner of Twenty-five and 15/100 (25.15) shares of the capital stock of the Standard Furniture Company (or its equivalent the same number of shares of stock of the Schoenfeld Holding Corporation), both Washington corporations, and

Whereas, the parties of the second part are desirous of purchasing all of the stock above referred to so owned by the party of the first part, [31]

Now, Therefore, in consideration of the mutual covenants and agreements herein set forth, the party of the first part does by these presents transfer, sell, assign and convey unto the parties of the second part, and that parties of the second part do hereby take, receive and purchase from the party of the first part, the Twenty-five and 15/100 (25.15) shares of stock above referred to upon the terms and conditions herein referred to.

(1) That the parties of the second part hereby covenant and agree to pay to the party of the first part such sum or sums as the party of the first part may require for her living

(Testimony of L. Kenneth Schoenfeld.)

expenses, taking into consideration the standards of living heretofore enjoyed by the party of the first part and the changing conditions of the times. At present the party of the first part does not require in excess of the sum of One Thousand (\$1,000) Dollars a month, nevertheless, the parties of the second part agree to pay her the sum of One Thousand (\$1,000) Dollars a month for the rest of her natural life, which amount may be increased to such sum or sums as the party of the first part may require, but not to exceed the sum of One Thousand Five Hundred (\$1,500) Dollars a month.

(2) Such sums shall be paid to party of the first part monthly in advance for each and every month during [32] her natural life and in determining the amount required for the living expenses of the party of the first part, her judgment shall be final and binding upon all of the parties hereto and not subject to any appeal whatsoever. The parties of the second part, may, in their discretion, increase the payments above the sum of One Thousand Five Hundred (\$1,500) Dollars a month but such excess amounts shall not invalidate any of the terms or conditions herein contained.

(3) The amounts herein to be paid to the party of the first part shall not be cumulative and she shall have no claim against the parties of the second part for back allowance for any

(Testimony of L. Kenneth Schoenfeld.)

months during which she has agreed to accept a lesser sum than One Thousand Five Hundred (\$1,500) Dollars a month.

(4) That in addition to the amounts to be paid to the party of the first part, as set forth in paragraph 1 above, and to begin at the date of the death of the party of the first part, the parties of the second part hereby agree and promise to pay monthly incomes to the brothers or sisters of the party of the first part so long as they shall live as the party of the first part shall direct in her last will and testament, not to exceed in the aggregate the sum of Five Hundred (\$500) Dollars a month. If the party of the first part shall [33] leave directions for annuities in her last will and testament, then the parties of the second part shall not be bound by any other directions made or claimed to have been made by the party of the first part.

(5) As security for the payments of the amounts herein agreed upon to be paid by the parties of the second part to the party of the first part, the parties of the second part hereby agree and covenant to place in escrow with any national bank in the City of Seattle, to be selected by the parties of the second part, the Twenty-five and 15/100 (25.15) shares of the capital stock of the Standard Furniture Com-

(Testimony of L. Kenneth Schoenfeld.)

pany (or its equivalent, the Schoenfeld Holding Corporation).

(6) During the time that such stock is held in escrow, as set forth in paragraph 5 above, the parties of the second part shall have the full and complete ownership thereof, including the right to vote the stock, receive all dividends declared thereon and to buy, sell, give, bequeath or transfer the stock between themselves or their families, strictly in accordance with the limitations of the Schoenfeld Holding Corporation and for such purposes may substitute stock of the same corporation held in escrow, share for share, subject always, however, to the lien of the party of the first part, or her heirs, to the payment of the annuities [34] herein agreed upon to be paid.

In Witness Whereof, the parties hereto have hereunto set their hands and seals the day, year and place first above written.

[Seal] MAUDE F. SCHOENFELD

Party of the first part.

[Seal] BERMAN SCHOENFELD

Party of the second part.

[Seal] HERBERT A. SCHOENFELD

Party of the second part.

[Seal] BESSIE B. SCHOENFELD

Party of the second part.

(Testimony of L. Kenneth Schoenfeld.)

State of Washington,  
County of King.—ss.

This Is to Certify that on this 10 day of December, 1923, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally came Maude F. Schoenfeld, Berman Schoenfeld and H. A. Schoenfeld and Bessie B. Schoenfeld, his wife, to me known to be the individuals described in and who executed the within instrument and acknowledged to me that they signed and sealed the same as their free and voluntary act and deed for the uses and purposes therein mentioned.

Witness my hand and official seal the day and year in this certificate first above written.

[Seal] MELVILLE MONHEIMER

Notary Public in and for the State of Washington, residing at Seattle." [35]

The record discloses the following statement taken from Government's counsel's opening statement at the hearing before the Board:

"The Member: She (Bessie B. Schoenfeld) was one of the purchasers of the stock?

Mr. Maddox: She was one of the purchasers of the stock, yes.

The Member: And also one of the parties that was liable under the annuity contract?

(Testimony of L. Kenneth Schoenfeld.)

Mr. Maddox: That is true. She apparently entered into this contract with her husband on a community property basis, as I understand it. That is the reason for her entering into this contract.

\* \* \*

Mr. Maddox: Now it appears that Bessie Schoenfeld, the wife of the decedent that we have here, died prior to the present decedent's death. Now, in her estate, the stock which is the subject of this agreement, was included in her estate to the extent of one-fourth thereof. It appears that the division of 25.15 shares is half to Berman, one-fourth to H. A. Schoenfeld, and a quarter to Bessie B. Schoenfeld. It was reported in the estate tax report as community property. There was included therein to the extent of a quarter of the value thereof an off-set—.

The Member: Is that agreed to?

Mr. Griffin: I know of (no) dispute concerning that.

Mr. Maddox: There was an off-set adjustment on account of that stock resulting from this agreement of December 10, 1923''.

Maude F. Schoenfeld died prior to June 26, 1931. Bessie B. Schoenfeld died on June 26, 1931 and her estate was probated at Seattle.



(Testimony of L. Kenneth Schoenfeld.)

The will of Bessie B. Schoenfeld (Exhibit 2) reads as follows: [36]

EXHIBIT 2.

“LAST WILL AND TESTAMENT  
OF  
BESSIE B. SCHOENFELD

I, Bessie B. Schoenfeld, of the City of Seattle, County of King, State of Washington, being of sound mind and [37] memory and over the age of twenty-one years, and acting freely and voluntarily, do hereby make, publish and declare this my Last Will and Testament in the words and figures following:

First.

I hereby nominate and appoint as Executor of this my Last Will and Testament, my husband, Herbert A. Schoenfeld, and I direct that he serve as such executor without being required to give bond of any sort whatsoever, and in the event my husband shall fail to qualify as such executor or not complete the administration of my estate I direct that my sons, Louis Kenneth Schoenfeld and Herbert A. Schoenfeld, Jr., be appointed executors of my estate, without bond, and with all of the powers herein conferred upon my husband as such executor.

(Testimony of L. Kenneth Schoenfeld.)

Second.

The following items of my personal effects I give, devise and bequeath unto my three sons as follows, provided, however, that so long as my husband continues living in our home, nothing shall be removed therefrom:

(a) To my son, Louis Kenneth Schoenfeld:

Sapphire bracelet and rings

Gold bag and small gold bag

Gold cigarette case

Petit point bag

Wedgewood cups, saucers and plates

Minton dessert places

Rock crystal glasses

Silver breakfast set

Silver water pitcher [38]

(b) To my son, Herbert A. Schoenfeld, Jr.:

Large diamond bracelet

Ruby bracelet and ring

Diamond wrist watch

Onyx vanity case

1 Italian towel

Minton dinner plates

Rock crystal and silver ice cream set

Flat silverware

1 silver vegetable dish

Rose Mary tea set

(Testimony of L. Kenneth Schoenfeld.)

- (c) To my son, Ralph A. Schoenfeld:
- Small diamond bracelet and ring
  - Diamond pin
  - Red and tan Aubussan Bag
  - Minton place plates
  - Red Crystal center piece and candle sticks
  - Silver bread and butter plates
  - Silver tea and coffee set and large tray
  - 1 silver vegetable dish

Third.

My community interest in stock of the Standard Furniture Company and/or Schoenfeld Holding Corporation, I give, devise and bequeath unto my husband, Herbert A. Schoenfeld, to have and to hold the same and enjoy the income therefrom for his natural life and upon his death to be distributed to my three sons, share and share alike, per stirpes.

Fourth.

I direct that any community liability to which my estate is subject because of the purchase of stock of the Standard Furniture Co., be paid by my husband out of the earnings on my community half of the stock of the Standard Furniture Company and/or the Schoenfeld Holding Corporation, hereinabove bequeathed to him for his life. [39]

(Testimony of L. Kenneth Schoenfeld.)

Fifth.

All of my separate property acquired from the estate of my father, David Barmon, I give, devise and bequeath unto my three sons, share and share alike per stirpes, conditioned, however, that the entire income therefrom shall be paid to my son Ralph A. Schoenfeld, until he shall have reached the age of 32 years and further provided that in the event my son Ralph A. Schoenfeld, does not enter the Standard Furniture Company, that he continue to receive the income from my separate estate until he shall have attained the age of 40 years.

Sixth.

To Elise Friedman, first cousin of my husband, if she be living at the time of my death, I give, devise and bequeath the sum of One Thousand (\$1,000) Dollars, and request that my executors give her such part of my wearing apparel and furs as she may desire.

Seventh.

I request that when my home is closed all of my personal effects and furnishings not specifically bequeathed, be given to my sons.

Eighth.

All of the rest, residue and remainder of my property, of every character, kind and description, real, personal and [40] mixed, separate

(Testimony of L. Kenneth Schoenfeld.)

and community, wheresoever situated and howsoever and whensoever acquired, I give, devise and bequeath unto my husband, Herbert A. Schoenfeld, if he survive me and in the event that he does not survive me, I give, devise and bequeath it all to my sons, share and share alike per stirpes.

#### Ninth.

It is my will, and I so direct, that after a decree of a court of competent jurisdiction has admitted this, my Last Will and Testament, to probate and my executors have filed a true inventory of all of the property of my estate and given such notices as are required by law, a decree of solvency of my estate be entered and that thereafter my estate shall be managed and settled by my executors as herein provided for; that no other proceeding in any probate or other court whatsoever be taken in the matter of this my Last Will and Testament or of my estate and that my said executors proceed to administer my estate without the intervention of any probate or other court whatsoever and without being required to report to or petition any probate or other court whatsoever and that they may sell for cash or partly for cash or exchange or hypothecate any real or personal property of my estate upon such terms as they shall deem proper without order of any probate or other court and without the necessity of [41] any order of confirmation whatsoever.

(Testimony of L. Kenneth Schoenfeld.)

Tenth.

I hereby revoke any and all Wills by me heretofore made.

In Witness Whereof, I have hereunto set my hand and seal at Seattle, King County, Washington, this 14th day of January, 1931.

[Seal]            BESSIE B. SCHOENFELD

This Is to Certify, that at the City of Seattle, County of King, State of Washington, on this 14th day of January, 1931, Bessie B. Schoenfeld, the testatrix above named, did in our presence and in the presence of each of us, sign each and every page of the foregoing instrument consisting of five (5) pages, in addition to this page; and she did thereupon, in the presence of us and each of us, publish and declare the same to be her last Will and Testament, and we, the undersigned, at her request and in her presence and in the presence of each other, hereunto subscribed our names as witnesses thereto.

WINIFRED KASTRUP

Residing at Seattle, Washington

RUSSELL F. STARK

Residing at Seattle, Washington

MELVILLE MONHEIMER

Residing at Seattle, Washington'' [42]

In the estate of Bessie B. Schoenfeld, the stock which is the subject of the agreement of Decem-

(Testimony of L. Kenneth Schoenfeld.)

ber 10, 1923 was included in her estate to the extent of  $\frac{1}{4}$  thereof; it was reported in the estate tax report as community property; there was an offset adjustment on account of the contract of December 10, 1923.

Herbert A. Schoenfeld died April 21, 1933.

In the inventory and appraisement filed in the probate proceeding of the Estate of Herbert A. Schoenfeld there was included on account of the stock purchased from Maude F. Schoenfeld, under the contract dated December 10, 1923, an undivided  $\frac{1}{2}$  interest in 12.575 shares of the common stock of the Schoenfeld Holding Corporation appraised at \$91,168.75.

Beatrice R. Falk, on behalf of the annuitants named in the contract of December 10, 1923, filed a claim against the Estate of Herbert A. Schoenfeld for \$65,190.00 and this claim was approved on behalf of the executors by L. Kenneth Schoenfeld and allowed by the probate court.

On the date of the death of Herbert A. Schoenfeld the ages of the annuitants were 48, 58, 59 and 70 years.

At the trial, counsel for the Government stated that the papers which he had did not disclose the life expectancy of the four individuals in terms of years but that such papers did disclose that the matter had been referred by the Bureau to the Veterans' Administration, which deals in such mat-

(Testimony of L. Kenneth Schoenfeld.)

ters, and the reversion factor determined by it [43] was that found in the deficiency letter.

It was stipulated that the typographical error in the Commissioner's deficiency letter of November 18, 1935 (attached to the amended petition) should be corrected to change the reversion factor from .6355 to .3655 and that the reversion factor which represents the present value of \$1.00, the possession and enjoyment of which is postponed until the end of the year of the date of death of the survivors of four persons, aged 48, 58, 59 and 70 years, respectively, is .3655.

The witness identified as Exhibit 4 the minute book and checks of the Schoenfeld Holding Corporation showing that the Corporation paid dividends as follows:

Date paid	Total paid	Paid to H. A. Schoenfeld or his estate
April 13, 1932.....	\$64,932.00	\$29,455.00
December 31, 1934.....	20,000.00	10,000.00
December 2, 1935.....	36,000.00	18,000.00

On

### Cross Examination.

L. Kenneth Schoenfeld testified as follows:

The amount shown in the claim of B. R. Falk, petitioner's exhibit 3, has not been paid. I do not know how much of it has been paid. I think \$500.00 a month has been paid since the date of the contract. I could not say whether that would amount



(Testimony of L. Kenneth Schoenfeld.)

to \$65,000.00; I do not believe it would. This is a claim against the estate of Herbert A. Schoenfeld and as far as I know it represents [44] the amount of money that is expected to be left as an expectancy. I do not know whether it was for the full \$500.00 a month obligation. It states here a promise to pay the claimant (so far as I know, the claimant's life) in the sum of \$500.00 a month. When the claim was filed I did not inquire into its correctness. I think the amount was based on the expectancy of the life of the survivors of Maude Schoenfeld. I believe the amount was computed through the experts on expectancies of an insurance company. I only know that it was the estimated amount on the expectancy. I do not think anybody can determine whether this is correct or not. It is estimated on expectancies over a given length of time and computed according to tables. Dividing \$65,190.00 by \$500.00 would give 130 months and 130 months divided by 12 would give 10½ years. The expectancy was determined by the insurance company. I do not recall what it was, not even approximately. I imagine it was for the ten years which I figured here. I do not think it represents the full obligation of \$500.00 a month. Not knowing, I would not testify. I would not know. I do not know the accuracy of the amount because it was determined by the expectancy. I assume it is approximately correct. I know the amount has not been paid out of this estate. There has been paid

(Testimony of L. Kenneth Schoenfeld.)

since the death of Maude Schoenfeld \$500.00 a month. That [45] has not been taken entirely out of the estate of Herbert A. Schoenfeld. I could not tell you that it has not been taken out. I do not have the checks for the payment of the annuity to the four individuals here. The amounts were paid every month by check. I do not sign all of the checks. The Schoenfeld Holding Corporation drew and signed the checks. I do not know whether that \$500.00 was computed on the amount we paid, or half of the amount that was paid, or whether it called for ten years or twenty years, or what it was. I could not tell you whether I have made any claim against the estate of Bessie B. Schoenfeld for half of the amount because I do not know anything about that. You will have to ask my attorney. I do not know what amount has been paid as a result of this claim.

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ARTHUR S. MORGENSTERN

identified the American Experience Mortality Table from which he testified that the life expectancy of a person 48 years of age was 22.35 years.

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BERMAN SCHOENFELD, JR.,

testified that his Mother was a sister of Maude F. Schoenfeld and that he knew all but one of the annuitants and that they were of the Caucasian race.

The foregoing is all of the material evidence adduced at the hearing before the Board of Tax Appeals, [46] and the same is approved by the undersigned, as counsel for the respective parties.

(s) MELVILLE MONHEIMER

(s) VAN. C. GRIFFIN

Attorneys for Petitioners.

(s) J. P. WENCHEL

Chief Counsel, Bureau of Internal Revenue, Attorney for Respondent.

Approved and Ordered Filed This 10th Day of Sept. 19, 1938.

(s) C. R. ARUNDELL

Member. [47]

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### PETITIONER'S EXHIBIT 3.

In the Superior Court of the State of Washington  
for King County in Probate.

No. 56843

In the Matter of the Estate of  
HERBERT A. SCHOENFELD,

Deceased.

### CREDITOR'S CLAIM.

The Estate of Herbert A. Schoenfeld, Deceased.

To Beatrice R. Falk, Nellie Falk, Violet Falk and  
Charles Falk, Drs.:

The decedent and Berman Schoenfeld entered into a written contract, dated December 10, 1923,

under the terms of which they promised to pay to claimants so long as any of claimants lived the sum of \$500.00 per month. That the balance due under said contract, according to the expectancy determined by the Combined Experience Table of Mortality is \$130,380.00.

Balance due claimants \$65,190.00

**BEE R. FALK**

State of Washington,  
County of King.—ss.

Beatrice R. Falk being first duly sworn upon oath deposes and says: that she is one of the claimants above named; that the foregoing claim, amounting to \$65,190.00 is just, true and correct, and said amount is justly due said claimants from the Estate of said deceased; that no payments have been made thereon except as hereinbefore stated; that there are no offsets thereto to the knowledge of this claimant.

**BEE R. FALK**

Subscribed and sworn to before me this 23rd day of June, 1933.

**JOHN F. EVICH,**

Notary Public in and for the State of Washington, residing at Seattle.

Due service of the foregoing claim is hereby acknowledged this 14 day of July, 1933.

**MONHEIMER & GRIFFIN,**

Attorneys for Executor.

Approved

Herbert A. Schoenfeld, Jr. adm.

L. Kenneth Schoenfeld.

Approved

JOHN A. FRATER,

Judge.

[Endorsed]: Filed in County Clerk's Office, King County, Wash. Jul. 18, 1933. Abe N. Olson, Clerk. By Lewis Abraham, Deputy. [48]

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In the Superior Court of the State of Washington  
for King County in Probate.

No. 56843

In the Matter of the Estate of  
HERBERT A. SCHOENFELD,

Deceased.

INVENTORY AND APPRAISEMENT.

State of Washington,  
County of King.—ss.

Berman Schoenfeld being first duly sworn upon oath deposes and says:

That he is the executor of the Estate of Herbert A. Schoenfeld, deceased, and makes this affidavit as such; that the following inventory is a full, true and correct inventory of all of the estate of said decedent; that the decedent made no transfers in contemplation of death of either tangible or intangible property by deed, grant, sale or gift, or other-

wise, and that the decedent had no interest, directly or indirectly, in any property of any sort whatsoever other than as set forth in the following inventory.

That none of the proceeds of any life or accident policies carried upon the life of the decedent was payable to the decedent's estate or the decedent's executor.

That the decedent was unmarried at the time of his death; that his wife, Bessie B. Schoenfeld, died June 26, 1931. That the property listed in the following inventory in the column "Appraisement on Prior Taxation" was transferred to the decedent from the estate of his deceased wife, Bessie B. Schoenfeld; that the Estate of Bessie B. Schoenfeld, King County Number 52701, paid an inheritance tax to the State of Washington and each item listed in the column "Appraisement on Prior Taxation" was included in the inventory of her estate and that the amount claimed herein as exempt is the value of each item as of June 26, 1931.

[Seal]

BERMAN SCHOENFELD

Subscribed and sworn to before me this 22nd day of June, 1933.

LORETTA ENNIS

Notary Public in and for the State of Washington,  
residing at Seattle. [49]

## INVENTORY OF REAL ESTATE

Item No.	Legal Description	Appraised Value	Appraisal on Prior Taxation
1.	Lot 16, Block 7, Denny Fuhrman Addition to the City of Seattle, King County, Washington (residence) Assessed valuation \$3,410.00.....	\$ 8,000.00	\$ 3,000.00
2.	An undivided one-half interest in lot 1, Block 3, W. A. Hall's Addition to the City of Seattle, King County, Washington (vacant) Assessed valuation \$140.00.....	\$ 140.00	\$ 87.50
3.	An undivided one-half interest in Lot 2, Block 25, Heirs of Sarah A. Bell's Second Addition to the City of Seattle, King County, Washington, (vacant) Assessed valuation \$7,400.00.....	\$ 5,000.00	\$ 1,562.50
4.	The North 120 feet of east one-half of Block 24, D. T. Denny's Home Addition to the City of Seattle, King County, Washington (vacant) Assessed valuation \$3,000.00.....	\$ 7,000.00	\$ 4,000.00
5.	Lot 6, Block V, Bell's 6th Addition, to the City of Seattle, King County, Washington (vacant) Assessed valuation \$4,800.00.....	\$ 8,000.00	\$ 6,000.00
6.	An undivided 41.3% interest in Lots 7 and 8, Block U, Bell's 6th Addition to the City of Seattle, King County, Washington (vacant) Assessed valuation \$10,800.00.....	\$ 6,608.00	\$ 4,543.00

Item No.	Legal Description	Appraised Value	Appraisal on Prior Taxation
7.	A tract of land in lot 7, Section 17, Township 36 N., R. 42 E. W. M., described as follows: Commencing at the intersection of the Section line between Sections 17 and 18, Twp. 36 N., R. 42 E. W. M., with the Kaufman Road as surveyed across said lot 7, thence East along the center line of said Road a distance of 236 feet, more or less, to a stake, being the point of beginning; thence East along the center line of said road a distance of 50 feet to a stake; thence north 153.6 feet to a stake on the Government meander line	\$34,748.00	[50]

## REAL ESTATE

Balance Forward	\$34,748.	\$	
on lake shore, thence West along said meander line 50 feet to a stake; thence south 165.9 feet to a point of beginning, being Lot 5, of Gillette South Shore Tracts, situated in Stevens County, State of Washington.			
Assessed valuation \$130.00.....	\$ 260.00	\$	150.00
Total Real Estate	\$35,008.00	\$	[51]



## INVENTORY OF PERSONAL PROPERTY

Item No.		Appraised Value	Appraisal on Prior Taxation
8.	Cash deposited with Loretta Ennis.....	\$ 162.77	
9.	Cash Coolidge Mutual Savings Bank a/c # 939 .....	60.32	
	Interest 1-1-33 to 4-21-33 @3½%	.66	
10.	Cash 1st National Bank of Seattle a/c #15701 .....	12,952.23	
	Interest as above @3%	117.66	\$ 3,825.00
11.	Cash Seattle Trust Co. a/c #5091.....	3,006.86	1,409.81
	Interest as above @4%	37.08	
12.	Cash Seattle Trust Co. a/c #5979.....	862.18	431.09
	Interest as above @4%	10.64	
13.	Washington Mutual Savings Bank a/c #84896 .....	6,048.04	2,842.64
	Interest as above @3½%	65.28	
14.	½ interest in cash Washington Mutual Savings Bank a/c #27960—\$450.41.....	225.20	
	Interest as above @3½%	2.43	
15.	Certificate of deposit Mutual Benefit Life Ins. Co. Principal .....	\$47,500.00	
	Interest .....	118.75	
	Final Div.....	63.40	47,682.15
16.	Household furniture .....	\$ 5,645.00	\$ 2,822.50
17.	6 cyl. Standard Nash Coupe.....	\$ 340.00	\$ 387.50
18.	Cash surrender value of insurance poli- cies on life of Berman Schoenfeld:		
	Penn Life #1088480 .....	\$60,000. \$15,988.20	\$ 6,337.50
	“ #1090097 .....	20,000. 5,329.40	2,100.00
	“ #1090098 .....	20,000. 5,329.40	2,100.00

Item No.		Appraised Value	Appraisal on Prior Taxation
19. Jewelry:			
	Watch .....	\$ 10.00	
	Masonic ring .....	\$ 12.50	
	Pearl scarf pin.....	\$ 27.50	
	Elephants .....	\$ 750.00	\$ 800.00
	Forward	\$104,665.50	\$
			[52]
	Brought forward	\$104,665.50	\$
Stocks and bonds			
20.	5—\$200. Local Improvement Bonds City of Seattle, District #3403; Nos. 1237, 1239, 1241, 1243, 1245—6%		
	Due 6-6-1934 .....	\$ 700.00	\$ 450.00
	Interest from 6-6-32.....	52.50	
21.	2—\$1000. Western Union Telegraph Co. 5% bonds. Nos. M-20252-53		
	Due 12-15-51 .....	980.00	1,012.50
	Interest from 12-15-32.....	35.27	
22.	1—\$1000. San Joaquin Light & Power 5% Bonds. No. M5253		
	Due 1-1-57 .....	880.00	520.00
	Interest from 1-1-33.....	15.28	
23.	Undivided $\frac{1}{3}$ interest in Perpetual Op- tion Warrant — Commonwealth and Southern Corporation — 100 shares.....	37.50	29.16
24.	\$1000. Participating Certificate of North- ern Pacific Finance Co.....	\$ 200.00	\$ 350.00
25.	500 Shares common stock par \$1.00 Washington Mattress Co.....	\$ 0	.50
26.	Undivided $\frac{1}{2}$ interest in 12,575 shares common stock par \$10.00 Schoenfeld Holding Corporation.....	\$91,168.75	

27. 16.88 Shares common stock par \$10.00 Schoenfeld Holding Corporation.....	244,760.00	
28. Undivided 1/4 interest in 35.068 shares common stock par \$10,000. Standard Furniture Company.....	\$127,121.50	
Total Personal Property	\$	\$
	\$570,616.30	

[53]

State of Washington,  
County of King.—ss.

Norris A. Byers, Glenn Twigg and W. Kastrup,  
being first duly sworn on oath, each for himself,  
says: That he will truly and impartially appraise  
the property of said estate which shall be exhibited  
to him, to the best of his knowledge and ability.

NORRIS A. BYERS  
GLENN TWIGG  
W. KASTRUP

Subscribed and sworn to before me this 14 day  
of August, 1933.

MELVILLE MONHEIMER  
Notary Public in and for the State of Washington,  
residing at Seattle.

We, the undersigned, appraisers, do hereby cer-  
tify that we have appraised the property described  
in the foregoing inventory at the fair value thereof.

The appraisalment is as follows:

Real Estate	\$ 35,008.00	
	<hr/>	
Personal Property	\$570,616.30	
	<hr/>	
Total Appraisalment	\$605,624.30	
	43,961.20	identified
Less Property Pre- viously taxed	10,000.00	not identified
	\$	
	<hr/>	
NET APPRAISEMENT	\$551,663.10	

Dated this 14 day of August, 1933.

NORRIS A. BYERS

GLENN TWIGG

W. KASTRUP

[Endorsed]: Filed in County Clerk's Office, King  
County, Wash. Jul. 18, 1933. Abe N. Olson, Clerk.  
By Lewis Abraham, Deputy. [54]

In the Superior Court of the State of Washington,  
for the County of King.

No. 56843

State of Washington,  
County of King.—ss.

In the Matter of the Estate of  
HERBERT A. SCHOENFELD,

Deceased.

I, Carroll Carter, County Clerk of King County, and ex-officio Clerk of the Superior Court of the State of Washington, for the County of King, do hereby certify that I have compared the foregoing copy with the original Creditor's Claim and Inventory and Appraisement in the above entitled matter as the same appears on file and of record in my office, and that the same is a true and perfect transcript of said original and of the whole thereof.

In Testimony Whereof, I have hereunder set my hand and affixed the Seal of said Superior Court at my office at Seattle this 21st day of June, 1937.

[Seal]

CARROLL CARTER,

Clerk.

By LEWIS ABRAHAM,

Deputy Clerk.

[Endorsed]: U.S.B.T.A. Admitted in evidence  
June 21, 1937. [55]

## PETITIONER'S EXHIBIT 4.

SPECIAL MEETING OF DIRECTORS OF  
SCHOENFELD HOLDING CORPORATION

A special meeting of the Board of Directors of the Schoenfeld Holding Corporation was held at the office of the Standard Furniture Company at 5:34 o'clock P. M., on Saturday the 29th day of December, 1934.

There were present in person:

Berman Schoenfeld

L. Kenneth Schoenfeld

constituting all of the Directors.

The following resolution was unanimously adopted:

Be It Resolved That there be and there is hereby declared a dividend of \$20,000.00 payable December 31st, 1934 to all stockholders of record on that date.

There being no further business the meeting adjourned.

Respectfully submitted,

BERMAN SCHOENFELD

L. KENNETH SCHOENFELD

[56]

copy 11

No. \_\_\_\_\_

SEATTLE, Dec 31, 1934 1934

PAY TO THE ORDER OF Ralph A. Schoenfeld  
Herbert A. Schoenfeld - - - - \$10,000.00

EXACTLY **10000** DOLLARS  
A 9254

DOLLARS

SEABOARD BRANCH 19-25  
**FIRST NATIONAL BANK**  
SEABOARD BUILDING  
SEATTLE, WASHINGTON

SCHOENFELD HOLDING CORPORATION  
B. Schoenfeld Pres.

5. 13-1





ANNUAL MEETING OF THE TRUSTEES OF  
SCHOENFELD HOLDING CORPORATION

The regular annual meeting of the Trustees of the Schoenfeld Holding Corporation, was held at the residence of Berman Schoenfeld at 1220 21st North, Seattle, King County, Washington, April 4th, 1932 at 9:00 o'clock P. M.

There were present in person:

Berman Schoenfeld

Berman Schoenfeld, Jr.

H. A. Schoenfeld, Jr.

L. Kenneth Schoenfeld

Upon motion the following officers of the corporation were unanimously elected:

Berman Schoenfeld, President

H. A. Schoenfeld, Secretary-Treasurer.

Upon motion the following resolution was unanimously adopted.

Be It Resolved that there be and there is hereby declared a cash dividend, payable out of the surplus earnings of the corporation to all stockholders of record of April 1st, 1932, in the sum of \$64,932.00.

There being no further business, the meeting adjourned.

BERMAN SCHOENFELD,

President. [58]



No. \_\_\_\_\_

SEATTLE, Apr 13, 1932 1933

PAY TO THE ORDER OF H. A. Schoenfeld \$29,455.00 DOLLARS

EXACTLY \$29,455.00 CTS  
EA9264

SEABOARD BRANCH 19-23  
FIRST NATIONAL BANK  
SEABOARD BUILDING  
SEATTLE, WASHINGTON 12

SCHOENFELD HOLDING CORPORATION  
B. Schoenfeld

13-3



SPECIAL MEETING OF DIRECTORS OF  
SCHOENFELD HOLDING CORPORATION

A special meeting of the Directors of the Schoenfeld Holding Corporation was held at the office of the Standard Furniture Company, Seattle, Washington, on Tuesday, the 26th day of November, 1935 at 11:15 o'clock A.M.

The following directors were present:

Berman Schoenfeld

L. Kenneth Schoenfeld

All of the directors waived notice of the meeting.

The following resolution was unanimously adopted:

Be It Resolved that there be and there is hereby declared a cash dividend of \$36,000.00 payable immediately.

There being no further business the meeting adjourned.

Respectfully submitted,

L. KENNETH SCHOENFELD,

Secretary.

[Endorsed]: U.S.B.T.A. Admitted in evidence  
June 21, 1937. [60]



No. \_\_\_\_\_

SEATTLE, Dec 2, 1935

193

*L. Kenneth Schoenfeld*  
*Herbert A. Schoenfeld*

L. Kenneth Schoenfeld  
Herbert A. Schoenfeld  
ORDER OF Ralph A. Schoenfeld

----- \$18,000.00

EXACTLY 18,000 00/100 CTS  
A 9264

DOLLARS

SEABOARD BRANCH 19-25

FIRST NATIONAL BANK

SEABOARD BUILDING

SEATTLE, WASHINGTON 12

SCHOENFELD HOLDING CORPORATION

B. Schoenfeld

13-5





PETITIONER'S EXHIBIT 5.

[Printer's Note]: Petitioner's Exhibit 5 consists of rates and tables of the Mutual Benefit Life Insurance Company and is in the custody of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: Admitted in evidence June 22, 1937.  
[62]

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RESPONDENT'S EXHIBIT A.

AGREEMENT.

This Agreement made in duplicate is entered into at Seattle, King County, Washington, on the 26th day of November, 1926, by and between Maude F. Schoenfeld, party of the first part and Berman Schoenfeld, H. A. Schoenfeld and Bessie B. Schoenfeld, his wife, parties of the second part,

Witnesseth:

Whereas the parties hereto entered into a written contract, dated the 10th day of December, 1923, wherein the first party sold to the second parties 25.15 shares of the capital stock of the Schoenfeld Holding Corporation (or its equivalent, the Standard Furniture Co.) upon the terms and conditions set forth in said written agreement; and

Whereas, the first party is desirous of supplementing the terms and conditions of the agreement of December 10, 1923.

Now, therefore, in consideration of the affection, mutual respect and admiration existing between the parties hereto, it is agreed as follows:

1. That this supplemental agreement shall in no way abrogate, annul, change or affect any of the terms of the agreement of December 10, 1923, other than as hereinafter expressly provided for and the parties hereto do by these presents confirm said agreement of December 10th, 1923 and all of the terms and conditions set forth therein.

2. That if Beatrice R. Falk, sister of the first party, shall survive the first party, the said Beatrice R. Falk shall be assured of an income of \$1,000.00 per month so long as she lives, provided such sum, or any part thereof shall be necessary for her care and support [63] (as hereinafter defined) according to the terms of this agreement.

3. That party of the first part, by her last will and testament, or by previous disposition of her estate, shall provide that her sister, Beatrice R. Falk, shall have the use of the income of her entire estate for so long as the said Beatrice R. Falk shall live, and the income so derived shall be computed under the terms of this agreement as set forth in paragraph 4 (c) hereinafter mentioned. The party of the first part further covenants and agrees that prior to her death she will not voluntarily divest herself of all, or a material part, of her present estate. It is further agreed by and between the parties hereto that this agreement shall become

void and cease to be binding upon parties of the second part if Beatrice R. Falk shall voluntarily divest herself of all, or a material part, of her estate prior to her death.

4. That the \$1000.00 per month income shall be computed and determined as follows:

(a) The first party agrees that, by her last will and testament, she shall direct that an annuity of \$300.00 per month be paid to the said Beatrice R. Falk out of the funds provided for in paragraph four of the agreement of December 10, 1923.

(b) To this annuity of \$300.00 per month shall be added the annuity of \$100.00 per month now being paid to the said Beatrice R. Falk by Berman Schoenfeld.

(c) To these annuities of \$400.00 per month shall be added any and all other income to be received by the said Beatrice R. Falk from any and all other sources whatsoever including the income derived under paragraph three herein.

(d) To the monthly income available under sub-paragraphs (a), (b) and (c) last above written, the second parties jointly and [64] severally covenant and agree to and with the first party that they will add such sums as may be necessary to make the monthly income of Beatrice R. Falk equal to \$1,000.00 so long as such sum or any part thereof, shall be necessary to furnish her with proper care and support as hereinafter defined.

5. There is no intention on the part of any of the parties hereto that the said Beatrice R. Falk shall have the right or be allowed to increase her capital or to receive any sum or sums of money hereunder which are not necessary for her care and support or to receive any sums hereunder for any period of time longer than the necessity therefor shall exist.

6. Wherever in this agreement the terms "care and support" are used they shall mean in addition to ordinary and necessary living expense, all expenses incurred for professional advice or services of physicians, dentists and/or nurses, also all expenses incurred at hospitals, sanitariums or other similar institutions. In the event parties of the second part shall be unable to agree with Beatrice R. Falk as to what is necessary for her "care and support" the matter in question shall be determined by Berman Schoenfeld, Jr., and Melville Monheimer, whose decision shall be final and binding upon all of the parties.

In Witness Whereof the parties hereto have hereunto set their hands and seals the day and year in this agreement first above written.

[Seal] MAUDE F. SCHOENFELD

First party.

[Seal] BERMAN SCHOENFELD

[Seal] HERBERT A. SCHOENFELD

[Seal] BESSIE B. SCHOENFELD

Second parties. [65]

State of Washington  
County of King.—ss.

This Is To Certify that before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Maude F. Schoenfeld, to me known to be the individual who signed the foregoing instrument, and she acknowledged to me that she signed and sealed the same as her free and voluntary act and deed for the uses and purposes therein mentioned.

In Witness Whereof I have hereunto set my hand and seal this 26th day of November, 1926.

MELVILLE MONHEIMER

Notary Public in and for the State of Washington,  
residing at Seattle.

State of Washington,  
County of King.—ss.

This Is To Certify that before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Berman Schoenfeld, H. A. Schoenfeld and Bessie B. Schoenfeld, to me known to be the individuals who signed the foregoing instrument, and they acknowledged to me that they signed and sealed the same as their free and voluntary acts and deeds for the uses and purposes therein mentioned.

In Witness Whereof I have herunto set my hand and seal this 26th day of November, 1926.

MELVILLE MONHEIMER

Notary Public in and for the State of Washington,  
residing at Seattle. [66]

[Endorsed]: Admitted in evidence June 21, 1937.

[Endorsed]: U. S. B. T. A. Statement of Evidence filed Sept. 10, 1938.

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[Title of Board and Cause.]

PRAECIPE FOR RECORD.

To the Clerk of the United States Board of Tax Appeals:

You are hereby requested to prepare and certify and transmit to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, with reference to petition for review heretofore filed by the Petitioners in the above cause, a transcript of the record in the above cause, prepared and transmitted as required by law and by the rules of said Court, and to include in said transcript of record the following documents or certified copies thereof, to-wit; [67]

(1) The docket entries of all proceedings before the Board of Tax Appeals.

(2) Pleadings before the Board of Tax Appeals, as follows:

(a) Amended petition

(b) Answer of the Respondent.

(3) The findings of fact and opinion of the Board of Tax Appeals.

(4) The decision of the Board.

(5) The petition for review, filed by the petitioners in the above cause.

(6) The statement of evidence with Exhibits 3, 4 and 5 and "A" attached thereto.

(7) Orders of May 24th, June 24th, July 26th, August 26th and September , 1938 enlarging time for preparation of evidence and transmission and delivery of record. [Not included in record].

(8) This Praecipe.

(Signed) MELVILLE MONHEIMER  
and

(Signed) VAN C. GRIFFIN  
Counsel for Petitioners.

Service of a copy of this praecipe admitted this 19 day of Sep. 1938.

(Signed) J. P. WENCHEL  
Attorney for Respondent.

No counter praecipe.

(Signed) J. P. WENCHEL.

[Endorsed]: U.S.B.T.A. Filed Sept. 19, 1938.

[Title of Board and Cause.]

CERTIFICATE.

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 68, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praeceptum in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 29th day of September, 1938.

[Seal]

B. D. GAMBLE,

Clerk, United States Board of Tax Appeals.

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[Endorsed]: No. 9011. United States Circuit Court of Appeals for the Ninth Circuit. L. Kenneth Schoenfeld, Herbert A. Schoenfeld, Jr., and Ralph A. Schoenfeld, administrators, de bonis non, cum testamento annexo, of the Estate of Herbert A. Schoenfeld, deceased, Petitioners, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review a Decision of the United States Board of Tax Appeals.

Filed October 12, 1938.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.